

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3914 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

KANTILAL NAGJI HARIYANI

Versus

K S DIESELS LTD

Appearance:

MR THOMAS P VAGHELA for Petitioner

MR SI NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 21/07/97

ORAL JUDGEMENT

Kantilal Nagji Nariyani has filed the present
petition under Articles 226/227 of the Constitution of
India to challenge the order passed by the Labour Court,
Rajkot in Reference(LCR)No. 279/79 on 6.1.1982.

2. The petitioner Kantilal Nagji Nariyani was
working with the respondent -K.S. Diesels Limited since

1968. On 20.12.78 the petitioner was called in the office of the Personnel Officer Mr. K.C.Raval. When he went there had found that Security Officer Mr. Jethwa was also present there. When he went there, at about 3.30 p.m. after attending the first shift, he was told that he was indulging in gambling and he would be put under police investigation as well as departmental inquiry. It is his further case that on account of the said threat he was made to resign and the contents of the resignation letter were also dictated by the Welfare Officer Shri Vohra to the petitioner. It is his case that he has not at all voluntarily tendered his resignation on that day i.e. 20.12.78. Though he went to join his duty on the next day and three days thereafter, he was not permitted to join his duties. Thereafter he sent a letter dated 4.1.79 withdrawing his resignation but inspite of the same the respondent company failed to take him back in service. He therefore, approached the Assistant Commissioner of Labour, Rajkot who was pleased to refer the dispute to the Labour Court, Rajkot. The Labour Court Rajkot recorded the evidence of both the sides and was pleased to order the reinstatement of the petitioner but without back wages.

3. The petitioner has come before this court contending that the Presiding Officer, Labour Court, Rajkot was not at all justified in denying him back wages and he has not given any reasons for not awarding back wages to him. He therefore, wants this court to quash and set aside the order of the Labour Court by which he was denied back wages and to modify the award passed by the Labour Court by directing payment of back wages.

4. The notice was issued to the respondent at the time of admission of this petition with a direction to the respondent to state whether the company would like to accept the payment of 50 percent of the back wages. Thereafter the respondent company had appeared through their advocate but they did not agree to make payment back wages and therefore, this petition was admitted. This petition came up for final hearing today but neither the petitioner's advocate nor the petitioner nor the respondent or respondent's advocate are present. As the petition is of the year 1985 I proceed to dispose of the same finally on merits.

5. In the petition itself the petitioner has stated that on 20.12.78 he had tendered his resignation and the resignation letter is in his own handwriting. No doubt

he has added a clause to the same , admission of the resignation letter being in his own hand writing by saying that the contents therein were dictated by the Welfare Officer Shri Vohra. But it is very pertinent to note that he does not allege any malafides against Shri Vora. The petitioner has further clearly stated in his petition in para no.3 as under:

"....The learned Presiding Officer also found that the resignation was tendered under compelling circumstances when the workman was under the threat of the departmental inquiry and prosecution and the resignation was not voluntary. The learned Presiding Officer also held that the workman should have been allowed to resume duty. However, while ordering reinstatement of the workman the learned Presiding officer did not award any back wages on the ground that the petitioner had failed to show that the resignation was given under threat..."

Now if the above contents are considered then it would be quite clear that he has raised inconsistent contentions. In the first part of the above quotation he says that the Presiding Officer had found that the resignation was tendered under compelling circumstances and under the threat of departmental inquiry and prosecution and that the resignation was not voluntary but in the concluding portion he says that the Labour Court had found that the petitioner had failed to show that the resignation was given under threat.

6. The petitioner has produced the order passed by the Presiding Officer, Labour Court, Rajkot. Said order clearly shows that the workman examined two witnesses viz. Janak Jivabhai Gadhvi and one Kishorechandra Chhelshanker Raval on his behalf ;whereas respondent has not led any oral evidence. Now as regards Janak Jiva the Labour Court has found that the evidence of the said witness clearly indicates that the petitioner had voluntarily resigned from the service of the company. Though the petitioner had admitted that the resignation letter was written not voluntarily, witness Janak had gone to deny the same. After considering said evidence as well as the evidence of K.C.Raval the Labour Court has observed in para 9 of its judgment as under:

" I, therefore, hold that though resignation was not tendered by threat but it was tendered under compelling circumstances when the workman was

under the threat of departmental enquiry and prosecution and as it was voluntary, the workman should have been allowed to resume duty. The workman should therefore, be reinstated in service."

Then in para 10 the Presiding Officer has observed as under:

" Ordinarily the workman should get full back wages, but there are peculiar circumstances in this case which disentitle the workman to get backwages. Though the workman has tendered resignation which was not voluntary, the workman failed to show that the resignation has given under threat. It is in the heav of moment and under the pressing circumstances the workman tendered resignation but the reason given by him for giving resignation was family circumstances and thus he made the company to believe that resignation was voluntary."

Then in the concluding para 11, the Presiding Officer has observed as under:

" It appears that from the constant stand taken by the company that the company believed that the resignation was voluntary and so the workman has no right to be reinstated. Under these peculiar circumstances it is not proper to award back wages to the workman but he should be given benefit of continuous service. I, therefore, pass the following order."

Now if the observation of the Presiding Officer, Labour Court is considered, then it would be clear that the Presiding Officer had found that in view of the circumstances which were prevailing at the time of his resignation, the workman tendered his resignation. The Presiding Officer of the Labour Court has negatived the contention of the petitioner that his resignation was obtained by the company under duress. Therefore, in the circumstances the Labour Court was pleased to grant him reinstatement. He has granted reinstatement on a finding that on account of the existence of the circumstances the workman had no free mind when he tendered his resignation . But he was not prepared to accept the contention of the workman that he was compelled by the company to tender his resignation. Therefore, in the circumstances, where the Labour Court has granted reinstatement and refused to grant back wages on the principle that no work

no pay, then the discretion used by the learned Presiding Officer could not be said to be illegal or improper and said decision cannot be interfered by exercising discretionary powers either under article 226 or 227 of the Constitution of India. Therefore, in the circumstances, the petition will have to be dismissed and the same is accordingly dismissed. But in the circumstances of the case, there will be no order as to costs. Rule discharged.

(S.D.Pandit.J)